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Supreme Court, U.S.
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No. 08-1099

IN THE

Supreme Court of the United States

JOY BUILDERS, INC.,

Petitioner,

v.

TOWN OF CLARKSTOWN and
THE PLANNING BOARD OF THE
TOWN OF CLARKSTOWN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW YORK,
APPELLATE DIVISION, SECOND DEPARTMENT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's corporate disclosure statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

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INTRODUCTION

This Reply is interposed in response to the Respondents' opposition to the Petition herein.

1. THE COURT HAS JURISDICTION

The case cited by the Respondents for the proposition that the Court lacks jurisdiction does not fit with the situation at hand.[1] In *Gotthilf* the Petitioner had appealed to the New York Court of Appeals which, in turn, dismissed the appeal for lack of subject matter jurisdiction as the order before it was not final. Here the New York Court of Appeals, faced with a final order of the Appellate Division dismissed the appeal as of right after a *sua sponte* review of the merits because it found the case lacking of any substantial constitutional issue. That is a finding of substance and is an affirmance of the intermediate appellate court's holding giving the Court jurisdiction. In an exactly similar circumstance the Court has so held.[2]

2. THE COURTS BELOW DID NOT APPLY A *DOLAN* TEST

Even if New York has determined in *Twin Lakes* that *Dolan's* rule applies to in lieu of fees the courts

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[1]*Gotthilf v. Sills*, 375 U.S. 79 (1963).

[2]*R.J. Reynolds Tobacco Company v. Durham County*, 479 U.S. 130, 139 (1986).

below in this case applied a rational basis test - not a rough proportionality test keyed to the particular needs generated by the project at hand.[3] The rational basis test in *Dolan* type cases was specifically rejected in *Lingle.*[4]

CONCLUSION

This Court has jurisdiction to consider the Petition and the issue at hand - the application of *Dolan* to in lieu of monetary development fees - is one of wide confusion and diversion among the state high courts and the circuits. This case presents a perfect vehicle for the Court to resolve this long standing confusion regarding the reach of *Dolan.*

Dated: Goshen, New York
March 24, 2009

Respectfully submitted,

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[3]*Twin Lakes Development Corp. v. Town of Monroe,* 1 N.Y.3d 98, 105, 801 N.E. 2d 821 (2003), cert denied 541 U.S. 974 (2004).

[4]*Lingle v. Chevron USA,* 544 U.S. 528, 546-548 (2005).

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